

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JODIE LOTT

Plaintiff,

VS.

CITIBANK, N.A., et al.

Defendants.

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Case No. 4:14CV800
Judge Mazzant/Judge Bush

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND
ORDER REMANDING CASE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On July 22, 2015, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff's Motion to Remand and/or Alternatively for Other Relief (Dkt. #12) be GRANTED as to the motion for remand, DENIED as moot as to the alternative relief, and that this case be REMANDED to 16th District Court of Denton County, Texas.

On August 4, 2015, *pro se* Plaintiff filed objections to the Magistrate Judge's report (*see* Dkt. #52), objecting to the recommended remand of his claims. No Defendant has filed objections to the recommended remand.

The Court has made a *de novo* review of the objections raised by Plaintiff and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge.

The Court notes that although Plaintiff requests to withdraw his motion to remand, arguing the he “believes the most significant and important claim in this litigation matter concerns Lott’s claims in reference to Citibank,” he has not set forth the grounds for this Court’s jurisdiction over the removed state court action.

Plaintiff’s state court petition sufficiently pleaded facts against the in-state Defendants Benchmark Mortgage/Benchmark Title and Ticor Title to establish a claim against them. As noted by the Magistrate Judge, “the existence of even a single valid cause of action against the in-state defendants (despite the pleading of several unavailing claims) requires remand of the entire case to state court.” *Gray v. Beverly Enterprises–Mississippi, Inc.*, 390 F.3d 400, 412 & n. 11 (5th Cir. 2004). Even in his objections, Plaintiff continues to allege fraud by non-diverse Defendant Benchmark, arguing that his “claims against the in-state defendants may or may not be subject to a recovery and that in addition to diversity between Lott and Citibank we may have a significant scheme and/or artifice of bank fraud with Defendant Benchmark Mortgage...” Dkt. #52 at 2. Thus, despite his objections, Plaintiff continues to allege specific acts of wrongdoing by at least one of the Texas Defendants, divesting the Court of diversity jurisdiction.

Defendant Citibank, as the removing party, “bears the heavy burden of proving that non-diverse defendants have been fraudulently joined to defeat diversity.” *Burden v. Gen. Dynamics Corp.*, 60 F.3d 213, 217 (5th Cir. 1995). The Court agrees with the Magistrate Judge that Defendant – who has not objected to the recommendation of remand – has not sustained its burden in showing that there is no possibility of recovery against the in-state Defendants, nor has Defendant shown how the common-defense doctrine does not bar removal.

As to Plaintiff's request to withdraw the motion to remand, the Court must ensure that it has jurisdiction over his claims before proceeding on the merits, and, based on the record before it, the Court finds that it does not have diversity jurisdiction over Plaintiff's claims. Without jurisdiction, the Court cannot make findings as to any of Plaintiff's alternative relief.

The Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

Therefore, Plaintiff's Motion to Remand and/or Alternatively for Other Relief (Dkt. #12) is GRANTED as to the motion for remand, and DENIED as moot as to the alternative relief.

This case is hereby REMANDED to 16th District Court of Denton County, Texas for further proceedings.

It is SO ORDERED.

SIGNED this 23rd day of September, 2015.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE